

## What Are the Damages for Violating Washington's My Health My Data Act?

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On April 27, 2023, Washington enacted the “My Health My Data Act” (WMHMDA or the Act). Unlike other modern state privacy laws that purport to regulate any collection of “personal data,” WMHMDA confers privacy protections only upon “Consumer Health Data.” While the Act was promoted as a measure to help protect reproductive and gender affirming care, its scope goes beyond those discreet issues.

One of the unique aspects of WMHMDA is that it confers upon individuals the ability to bring private suit against a company that is believed to have violated the Act. Specifically, the WMHMDA treats a violation of the Act as an “unfair or deceptive act in trade or commerce and an unfair method of competition” under the Washington Consumer Protection Act, which is enforceable by private litigants in a similar manner as other alleged violations of the Washington Consumer Protection Act.<sup>[1]</sup> The private right of action has led to confusion regarding the types of remedies that can be sought from consumers versus the types of remedies that can only be sought by the government. The following chart summarizes the remedies that may be pursued by each type of plaintiff.

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	Injunction	Attorney's Fees	Actual Damages	Treble Damages	Civil Penalty	Statutory Damages
Private plaintiff	✓ <sup>2</sup>	✓ <sup>3</sup>	✓ <sup>4</sup>	✓ <sup>5</sup> (Up to \$25k)	✗	✗
Attorney General	✓ <sup>6</sup>	✓ <sup>7</sup>	✓ <sup>8</sup>	✓ <sup>9</sup> (Up to \$25k)	✓ <sup>10</sup> (Up to \$7,500 per violation)	✗

[1] WMHMDA Section 11.

[2] RCW § 19.86.090 (authorizing any person injured to seek to enjoin further violations).

[3] RCW § 19.86.090 (authorizing any person injured to seek to recover reasonable attorney's fees).

[4] RCW § 19.86.090 (authorizing any person injured to seek to recover actual damages sustained by him or herself).

[5] RCW § 19.86.090 (authorizing any person injured to seek an increase to the award of damages up to an amount not to exceed three times the actual damages). Note that treble damages are capped at \$25,000 for violations of RCW 19.86.020.

[6] RCW § 19.86.080(1) (authorizing attorney general to bring an action to seek to enjoin an act prohibited under the Washington consumer protection statute).

[7] RCW § 19.86.090 (authorizing the state of Washington to seek to recover costs including reasonable attorney's fees).

[8] RCW § 19.86.090 (authorizing the state of Washington to seek to recover actual damages).

[9] RCW § 19.86.090 (authorizing any person injured to seek an increase to the award of damages up to an amount not to exceed three times the actual damages). Note that treble damages are capped at \$25,000 for violations of RCW 19.86.020.

[10] RCW § 19.86.140 (authorizes the state of Washington to seek a civil penalty of not more than \$7,500 per violation).

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